

Emerging Markets Queries in Finance and Business

Roșia Montană.

Pros and Cons exploitation in terms of Human Rights

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Abstract

Exploitation at Roșia Montană (Romania) is a very important issue, not only from the economic point of view but also socially, historical and not the least, political. This project is widely publicized and its impact goes beyond the borders of Romania. This study aims to realize an analysis of the issue of starting the exploitation of Roșia Montană in relation to international case law based especially on the respect of human rights standards imposed by the European Convention of Human Rights.

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1. Introduction

The project at Roșia Montană, Europe's largest opencast gold mine, has sparked a big controversy: golden profits versus environmental concerns. The European Convention of Human Rights aims for fair balance

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between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (Sporrong and Lonnroth v. Sweden, 1982). The fair balance principle is a judicial creation which has its origins in the essence of the Convention where member States undertake to respect the fundamental rights of their populations. So, in case of Roşia Montană, it is important to analyze if there is a fair balance between the nation's economic welfare, particularly when evaluated by a temporary government, and the respect due to fundamental rights of the Roşia Montană community.

2. Potential violation of article 2 of the European Convention of Human Rights: The right to life in connection with the right to health and the right to a healthy environment

Article 2 of the Convention regarding the right to life can only be called into question if corroborated with the right to a healthy environment. The community of Roşia Montană depends on its lands with which it has an ancestral connection. Furthermore, the area is linked with a historical scene which is part and parcel of national history. A safe, clean, healthy and sustainable environment is integral to the full enjoyment of a range of human rights, including the right to life. As the R.M. Gold Corporation mining project will use cyanide to extract gold and silver, it is unquestionable that there is a real risk of an environmental disaster.

The right to life is guaranteed for every human being and it states that *nobody shall be deprived of his life intentionally*. Within the arbitrary means of violation of this right, all human actions and activities must be included which, through degradation of environment or of its elements (air, water, soil, woods), could cause life loss (Iancu, 1998).

At the present moment, neither the European Convention of Human Rights nor its additional protocols recognize expressly the fundamental right to a healthy environment, mostly due to historical reasons, because at the moment of the treaty's adoption, the dangers which might threaten the environment were practically nonexistent (DuTu, 1998). Through article F (2) of the Maastricht Treaty¹, the right to a healthy environment has reached an indirect recognition, most often in corroboration with the right to life (DuTu, 1998). According to article 191 (2) of The Treaty on the Functioning of the European Union, Romania, as a European Union member state, shall obey all regulations included in the founding and additional treaties. In the academic literature, it has been considered that the guarantee of the right to life could be violated in at least three environmental issues: a) in case of massive pollution with seriously harmful effects; b) in case of accidents with serious environmental consequences (e.g. Chernobyl, Baia Mare); c) in case of systematic and high proportions of emissions exceeding the tolerable limits legally admitted for particularly hazardous substances (Popescu, 1991).

Taking into account the considerations above, and drawing a parallel with the Roşia Montană mining project, we could conclude that the use of cyanide for the exploitation of metals, which is a *hazardous to the health and life of humans, plants and animals* (Mazilu, 2008), represents a real threat to the right to life. According to some reports, the Roşia Montană project would use cyanide, which will have to be poured at a rate of 40 tons per day, amounting to 12.000 tons of cyanide annually. As, a mining engineering professor Dr. Marcello Viega states *the use of cyanide sparks fear into people because of some notorious incidents* (Logan, 2013), such as the Baia Mare cyanide spill in 2000, which was called the worst environmental disaster in Europe since the Chernobyl incident. Since that disaster, Germany, the Czech Republic, Hungary and Turkey have banned cyanide in gold extraction. *The amount of cyanide used in the Rosia Montană project is more than*

¹ Article F, paragraph 2 of Treaty on European Union: *The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.*

130 times the amount used in the Romanian Baia Mare gold mine, according to an online article in Der Spiegel.

The calamitous effects of *this wild and anti-ecological exploitation* (Mazilu, 2008) are stringently evidenced by the Romanian doctrinaire, Dumitru Mazilu, who states that *it is scientifically proven that cyanide is not the only danger caused by this exploitation technology; sludge and water resulted from this process could also cause pollution, including the toxic metals resulting from mining* (Mazilu, 2008). This leads to the violation of European regulations that stipulate: a) the maintenance, protection and improvement of environmental quality; b) the protection of human health; c) the prudent and rational use of natural resources; d) the promotion of measures concerning regional or world environmental issues at an international level (UN, 1998). Thus, the main victims of the cyanide method used by the R.M. Gold Corporation on the Roşia Montană landscape shall be both the environment itself and its residents, not only the current generation, but also the future generations because *those who don't exist yet, will be born in the future, have the right to a safe environment, at least in the same conditions as the present generations have enjoyed it, and for this reason, contemporaries have the obligation not to destroy the environment* (Iancu, 1998).

The implementation of this project is contrary to the EEC No. 92/34 Directive concerning the preservation of natural habitats and wild fauna and flora, as Roşia Montană is under protection and it was declared as the rural area with the richest heritage in Romania.

Last but not least, the right to health must also be taken into account in connection with the right to life. The Roşia Montană community faced an unacceptable situation. In 2002, the general medical practitioner of Roşia Montană (G.P.) received an offer from the company to stop practicing medicine in Roşia Montană. *“The mining company S.C. R.M. Gold Corporation offered the general practitioner, Dr. Florin Georgescu, the amount of 840.000.000 lei, just to leave Roşia Montană. For one year, the parish had no medical assistance.”* (Lupescu, 2004, no. 617). This strategy discouraged and intimidated the remaining locals, which were already left without neighbours, relatives, a pharmacy, a bakery and food stores. After eight months without medical assistance, the locals presented this situation to the Alba County Health Department. In the meantime, three doctors from Italy volunteered to work in Roşia Montană, asking only for a work space. The Health Department did not accept the initiative of the Italian doctors, telling them that a new doctor was going to be appointed as soon as possible. For a period of time, the general practitioner of the community provided medical services only two-three days per week.

In conclusion, through the violation of the right to a healthy environment, it is not only possible, but it is highly likely that the right to life would also be violated.

3. Potential violation of article 8 of the European Convention of Human Rights: respect of private and family life

Article 8 of the European Convention of Human Rights is the first in a series of four provisions that protect the social respect for the individual (ChiriTă, 2007). Therefore, the Convention establishes an efficient applicability control for these provisions. Regarding the definition of “private life”, the Court has avoided describing this notion, considering that it would have been too restrictive for the term to be limited to an exclusive group, were anyone could live as he desires, sheltered from the outside world. Nevertheless, the respect of private life must include the right of developing social relations with other persons (Niemietz Case).

The community of Roşia Montană, from an administrative point of view, is a township comprising 16 villages. Besides that, the community is strongly connected to the spiritual heritage of the place. Serenity, peace, nature, spirituality, culture, history, all these are the distinctive features of this community, considered a cultural heritage of a unique identity. As Dr. Horia Ciugudean, one of Romania's foremost archaeological experts declared, *Rosia Montană is an area where the spirit of the place is more visible, more present than in*

other areas, and at the same time an area where exactly the disregard of the spirit of the place has generated a social drama with unpredictable consequences (Community of Roșia Montană, 2013).

Referring to all the dramatic consequences that are caused by the implementation of the mining project, there is an unquestionable violation of article 8 of the Convention. The Court stated in *Taşkin et alii vs. Turkey case*, that article 8 is applicable to serious prejudice of the environment, which could affect the wellbeing of a person and the free enjoyment of one's home in such a way that it could damage private and family life (ChiriTă, 2007). Therefore, since 2002, when the area of industrial development was reserved for the gold mining project, there has been an endless string of actions or inactions promoted by the state or by R.M. Gold Corporation which have led to a process of decay of Roșia Montană's community life, at all levels: demographic, social, psychological, emotional, economic and cultural.

The changes to which the community was subjected, without taking into consideration the spirit of local people, have changed and compromised the community's spiritual identity and have degraded its immaterial values. The cessation of representative markets and festivals such as Roșia Montană Fair (marking the beginning of the spring), The Autumn Market (marking the end of autumn), or the Labor Day Fair, showed that the community has lost its traditional celebrations.

The actions of displacement and expropriation have engendered community and family divisions and have increased instability among family members (relatives who do not speak for years because of the conflicts related to the sale of the properties, children who have sold the homes of their parents or grandparents, elderly homeless people). This process was possible even without the certainty that the project will happen, as the environmental permits were still not obtained in March 2013. It is stated that *a special protection of the residence should be provided because that is the place where a person develops most of his/her private and family life and also due to strong feelings connected to that place* (ChiriTă, 2007). In addition, the failure to adequately preserve the environment where cultural and natural heritage can be found, the destruction of landscape and the degradation and loss of cultural patrimony has had a severe impact on the community's emotional life, causing feelings of abandonment, isolation, confusion, hopelessness and loss of confidence and trust in state and local authorities.

The news of implementing the R.M. Gold Corporation project divided the community into two groups: one for supporting the mining project and one against. This conflict has led to the degradation of human relations, the polarisation and disintegration of what was once a united community.

Through this process, the Roșia Montană community has been denied the continuation of its ancestral existence on the lands to which they are deeply bound. The United Nations High Commissioner for Refugees declared that the traditional and specific lifestyle of a community must be protected because its members are deeply rooted in their culture, and if such a measure won't be taken in time, a generation gap shall emerge that shall ultimately cause, the community's disappearance (Bernard Ominayak vs. Canada, 1990).

Therefore, there is no doubt that there has been a violation of article 8 of the Convention, even without the commencement of mining.

4. Potential violation of article 2 of Additional Protocol No.2: right to education

Article 2 of the Additional Protocol to the European Convention of Human Rights stipulates that *No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching.* The right to education must be included in the fundamental rights and freedoms (Kjeldesen, Busk Madsen et Pedersen c/Danemark, 1976).

The concepts of education and teaching were defined by the Court in the case of *Campbell and Cosans v. United Kingdom* as follows: *the education of children is the whole process whereby, in any society, adults endeavor to transmit their beliefs, culture and other values to the young, whereas teaching or instruction refers in particular to the transmission of knowledge and to intellectual development* (ECHR, 2011). A state has, on the one hand, the negative obligation not to deprive a person of receiving education and, on the other hand, has the positive obligation to maintain and adapt the educational system according to the current needs of social development (Bîrsan, 2005).

In the Roşia Montană community, the relocation implied serious consequences for the process of education. For example, as of 2013, only 9 students from different grades remained in elementary school, studying altogether with only one teacher, reducing the quality of education and decreasing student performance (Community of Roşia Montană, 2013). As a result, the educational program the students benefit from is inadequate, because even if they go to school, they experience a quality of education that is extremely poor, leaving them without the skills and knowledge they need (Unicef, 2007). The state failed to ensure the adaption of the educational system to the circumstances created by the preparation for implementing the mining project.

As a consequence, children are deprived of a good quality education, which may result in a violation of article 2 of Additional Protocol No.1.

5. Potential violation of article 9 of the European Convention of Human Rights: freedom of thought, conscience and religion:

Freedom of thought, conscience and religion is stipulated in article 9 of the European Convention of Human Rights.

The conflict generated by the mining project also impacted the integrity of the local churches. The fact that the position of the local representatives of these churches opposed the official one, declared by the Orthodox Church, generated serious imbalances within the local community concerning the affiliation to a certain religion, with effects on human relations on a social and on a spiritual level.

In these circumstances, the confrontation between the two elements of this right could result in a violation of article 9 of the Convention. A causal relationship has emerged between the fact that representatives of Roşia Montană churches are entitled to freely express their beliefs about the R.M. Gold Corporation project and the perturbation of religious conviction in the community.

Therefore, the state has the obligation to ensure the right to freedom of expression without violating the freedom of religion. As a consequence of this dispute, the Roşia Montană community is affected not only emotionally, but spiritually as well.

6. The implementation of the Roşia Montană project in contradictory official points of view:

It is a notorious fact that this topic raised many discussions, disputes and arguments between those who are for and against the commencement of mining at Roşia Montană. To emphasise the main contradictory points of view of the opposing camps, we shall evoke the arguments publicly expressed by Teodor Meleşcanu and Andrei Paul Zlătescu. During the European Conference of International law vs. National law held by the International Law Society on 16th September in Bucharest, when asked about his opinion on the commencement of exploitation at Roşia Montană in connection with human rights, Mr. Teodor Meleşcanu stated: *The solution has to be a local one and one of opportune and it is up to the Government. Every people have the Government they deserve. We can express preferences, but ultimately, there must be a decision at the level of the executive. This is an opportune decision. We must take into account everybody's opinions, but in the end, the people whom we elected must decide on this point, and we must understand it more or less.* On the other hand, Andrei Zlătescu holds that: *There are many factors that are to be considered when evaluating*

the advantages and disadvantages of starting exploitation at Roșia Montană. The protection of human rights and environmental protection should prevail. There still is choice in the case of Roșia Montană. The decision must rest on factual evidence.

More or less directly, the two opinions reflect the reality of the perpetually confusing question: should or should not the economic welfare of a nation prevail over the requirements of the protection of the individual's fundamental rights?

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